

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MILINDA G.,

Claimant,

OAH No. 2009090770

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency.

DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter telephonically on November 24, 2009, in Oakland, California.

Claimant was represented by her aunt.

Nancy Ryan, Attorney at Law, represented service agency Redwood Coast Regional Center.

The record was left open to allow Redwood Coast Regional Center (RCRC) to submit additional information regarding claimant. RCRC submitted a letter dated December 4, 2009, which was marked as Exhibit 6 and admitted into evidence. The record was closed, and the matter was submitted for decision on December 7, 2009.

ISSUE

Did the service agency err by reducing claimant's respite from 260 to 78 hours per quarter?

FACTUAL FINDINGS

1. Claimant is 31 years old. She receives RCRC services based upon a diagnosis of mental retardation. Claimant also has a seizure disorder and a congenital eye condition

that limits her vision. Claimant must be carefully watched because her eye condition makes her prone to tripping or falling down. Claimant cannot attend to self-care tasks such as hygiene, dressing and eating, without assistance from her family or a respite worker. Claimant also requires supervision because she has limited safety awareness.

2. Claimant lives with her aunt and uncle.¹ Claimant's aunt works part-time, and her uncle works full-time. Claimant attends a day program for 11 hours per week. Insofar as claimant's aunt and uncle do not have extended family in the area, they must rely on sources outside of the family for support in caring for claimant. When claimant is not at her day program or receiving respite, she is cared for by her aunt and/or her uncle.

3. RCRC provides claimant with, among other things, 260 hours of in-home respite services per month. Claimant's aunt and uncle use the respite time to spend time alone together.

4. RCRC issued claimant a Notice of Proposed Action on August 26, 2009, which reduced the provision of respite services from 260 hours to 78 hours per quarter. Claimant timely filed a fair hearing request.

5. RCRC considered whether it should grant claimant an exemption for continued funding of respite pursuant to Welfare and Institutions Code section 4686.5. It concluded that claimant did not qualify for an exemption under this statute because she was not at risk for being institutionalized and there were no extraordinary events that would impact the ability of claimant's aunt and uncle to meet her care and supervision needs.

6. After the enactment of legislation limiting the provision of in-home respite to 90 hours per quarter, RCRC determined that it would reserve the 90 hours per quarter of respite for its neediest consumers, who, for example, are medically fragile or who are very difficult to manage for other reasons. RCRC concluded that because claimant did not fall into the category of its neediest consumers, she only qualified for 78 hours of respite per quarter.

7. Claimant's aunt did not present evidence that would satisfy the standards for obtaining an exemption to the limitations for respite imposed by Welfare and Institutions Code section 4686.5. She did, however, establish that she and her husband have genuinely benefited from the respite hours that they have received from RCRC, and that the proposed reduction in respite presents a huge hardship for them. According to her aunt, claimant has a "child-like mind" and requires a lot of care and attention. Claimant's aunt and husband spend their time either at work or caring for claimant, and they sorely need time away from claimant to rest and relax.

¹ Her aunt is also her co-conservator.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500 et seq.) The Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Act directs regional centers to develop and implement an Individual Program Plan (IPP) for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.) As the Act repeatedly makes clear, in order to achieve the goals and objectives set forth in a consumer's IPP, regional centers must secure services and supports that meet the needs of the individual consumer. (Welf. & Inst. Code, §§ 4648, 4646, 4646.5.)

2. In-home respite is one type of service provided to consumers. It is defined under Welfare and Institutions Code section 4690.2, subdivision (a), as follows:

"In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

3. The Legislature has made significant changes regarding the provision of services under the Lanterman Act through the Budget Act of 2009. With respect to the provision of respite services, Welfare and Institutions Code section 4686.5 was added to provide in relevant part:

(a) Retroactive to July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

(1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

(2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.

(3)(A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

[. . .]

(b) For consumers receiving respite services, on July 1, 2009, as part of their IPP . . . , subdivision (a) shall apply on August 1, 2009.

4. Welfare and Institutions Code section 4686.5, therefore, requires RCRC to limit the purchase of respite services for claimant to 90 hours per quarter, unless the regional center determines that claimant meets the criteria for an exemption. RCRC has determined that claimant does not meet the criteria for an exemption and has not granted claimant an exemption. No evidence was presented at hearing which would support a determination that the regional center erred in making these determinations. Accordingly, it is concluded that RCRC has properly reduced the provision of respite services to claimant, as mandated by Welfare and Institutions Code section 4686.5, subdivision (a).

5. RCRC did not establish a legal basis for reducing claimant's respite hours from the statutory maximum of 90 hours per quarter to 78 hours per quarter. Under the Act, the determination of services and supports must be made on the basis of the individual needs of the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5.) Accordingly, RCRC may not reduce claimant's respite to 78 hours per quarter on the grounds that the maximum of 90 hours per quarter should be reserved for consumers who are needier than claimant. Claimant's disabilities are such that she requires careful supervision with self-care tasks, mobility and safety awareness. Claimant's caregivers sorely need a break from the care and

supervision of claimant. Under these circumstances, RCRC erred in reducing claimant's hours to 78 hours per quarter.

ORDER

The appeal of Milinda G. is denied to the extent that she seeks continued funding of respite in an amount greater than 90 hours per quarter. Her appeal is granted to the extent that RCRC may not reduce funding for respite to 78 hours per quarter. RCRC, therefore, shall provide Milinda G. with respite funding for 90 hours per quarter.

DATED: 12/16/09

/s/
DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.